SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2031 OF 2006

Shri Gamaji Rama Patil ....Petitioner

Vs.

Shri Tatyasaheb Kore Warna
Sahakari Sakhar Karkhana Ltd.
& Anr. ....

Respondents

Mr P. D. Dalvi for petitioner.

Mr. V. B. Rajure for respondent 1.

Ms. M. M. Deshmukh, APP for the State.

CORAM : SMT. RANJANA DESAI, J.

DATE : 10TH NOVEMBER, 2006.

P. C.:-

1. In this criminal writ petition filed under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner has prayed that order dated 08/09/2006 passed by the Judicial Magistrate, First Class, Panhala in Criminal

Case No. 174 of 2006 be quashed and set aside.

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2. According to the petitioner, he was working as Mukadam in the cane yard section of respondent 1 Karkhana. On 14/02/2003 at about 10.00 a.m., the Managing Director of the said Karkhana threatened and abused him in filthy language. Therefore, he lodged a complaint against him on 15/02/2003 and as a counter-blast of the same, on 25/02/2003, the office bearer of respondent 1 lodged a frivolous private complaint against the petitioner in the court of Judicial Magistrate, First Class, Panhala bearing Regular Criminal Case No.23 of 2003, wherein it is alleged by respondent 1 that the petitioner has stolen six steel bars from the premises of respondent 1 on 30/12/2002 and he was caught by the on-duty watchman Shri Nameo Ananda Patil who reported the incident to the on-duty supervisor. The Security Officer submitted a report on 31/12/2002. Thereafter, respondent 1 approached the concerned police station to lodge the complaint but the police officials refused to register the same and therefore, respondent 1 lodged the instant complaint on 27/02/2003 against the petitioner. The complainant i.e. respondent 1 did not remain present in the court. The learned

Magistrate

dismissed the complaint for want of prosecution and discharged the petitioner. The order passed by the learned Magistrate is as under:-

> "*It appears from the record that the complainant is absent since long back the predecessor has also passed order to that effect on Exh. 1. Today again complainant and prosecution Advocate failed to appear. So opportunity is given. I feel that charge appears to be groundless as the complainant is not appearing. Hence the case is hereby dismissed for want of prosecution.*
>
> *Accused hereby discharged.*"

3. Thereafter, respondent 1 again lodged a similar complaint against the petitioner being Criminal Case No. 174/2006 in the court of Judicial Magistrate, First Class, Panhala on 08/09/2006. The learned Magistrate directed the Investigating Officer to submit the report under section 156(3) of the Criminal Procedure Code ("The Code", for short). The order passed by the learned Magistrate, on 08/09/2006 may be quoted :-

> "*Heard complainant perused the report prima-facie issue of process is doubtful. The inquiry if held u/sec. 202 would not be helpful considering the alleged offence. Thus for better insight case report u/sec. 156(3) from Kodoli Police station r/o. on 7.10.2006*"

4. This order is challenged in this petition. I have heard the learned counsel for the parties, at considerable length. Shri P. D. Dalvi, learned counsel appearing for the petitioner submitted that the first complaint filed by respondent 1 having been dismissed respondent 1 could not have filed a similar complaint by making the same allegations. He submitted that the learned Magistrate could not have entertained the said complaint and the order passed by the learned Magistrate, calling for the report under Section 156(3) of the Code from the Kodoli Police Station is totally illegal. Mr. Dalvi further contended that the learned Magistrate has lost sight of the fact that the second complaint was clearly barred by limitation. He drew my attention to Section 468 of the Code and submitted that the alleged offence has taken place on 30/12/2002 and hence the second complaint filed on 8/9/2006 is barred by limitation. He submitted that on this ground alone, the complaint could not have been entertained.

5. As against this, the learned counsel for respondent 1 submitted that there is no bar prohibiting the learned Magistrate from

entertaining a second complaint on the same facts. In support of this

submission, the learned counsel placed reliance on the judgment of the Supreme Court in ***A.S. Gauraya, Maj. Genl. Vs. S. N. Thakur, AIR 1986 Supreme Court Cases 1440***, and ***Mahesh Chand Vs. B. Janardhan Reddy, 2003 Supreme Court 702,*** and ***Poonam Chand Jain Vs. Fazru AIR 2005 Supreme Court 38*** and judgment of the Gujrat High Court in ***A. H. Pathan Vs. Amin Textiles and Ors 1995 Cri. L. J. 1843***. The learned counsel submitted that whether the complaint is barred by limitation or not is a question of fact and if such an objection is raised, that can always be decided by the learned Magistrate at the appropriate time. He, submitted that in the circumstances there is no substance in the instant petition and the same deserves to be dismissed.

6. I have given my anxious consideration to the arguments advanced by both sides. In ***Pramatha Nath Taluqdar Vs. Saroj Ranjan, AIR 1962, Supreme Court 867,*** the Supreme Court has inter-alia held that in exceptional circumstances if a second complaint on the same allegations is filed when a previous complaint had been

dismissed under Section 203 of the Code, it can be entertained. After considering the relevant provisions of law and the relevant

decisions, on the point, the Supreme Court observed as under:-

> *"There is nothing in law which prohibits the entertainment of a second complaint on the same allegations when a previous complaint had been dismissed under S. 203 of the Code of Criminal Procedure. As, however, a rule of necessary caution and of proper exercise of the discretion given to a Magistrate under S. 204(1) of the Code of Criminal Procedure, exceptional circumstances must exist for the entertainment of a second complaint on the same allegations; in other words, there must be good reasons why the Magistrate thinks that there is "sufficient ground for proceeding" with the second complaint, when a previous complaint on the same allegations was dismissed under S. 203. The test to determine the exceptional circumstances are (1) manifest error, (2) manifest miscarriage of justice, and (3) new facts which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings. Any exceptional circumstances coming within any one or more of the aforesaid three categories would fulfill the test. All these three may be reduced to a single test thus: Whenever a Magistrate is satisfied that the previous order of dismissal was due to a manifest error or has resulted in a miscarriage of justice, he can entertain a second complaint on the same allegations even though an earlier complaint was dismissed under S. 203 of the Code of Criminal Procedure.*

7. It is clear from the above observations that in exceptional

circumstances, the second complaint can certainly be entertained by a Magistrate. Exceptional circumstances could be said to be present

where there is manifest error, manifest miscarriage of justice and new facts which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings. The Magistrate must consider whether if the second complaint is not entertained, there would be a miscarriage of justice. If he is satisfied that there would be a miscarriage of justice, he can entertain the second complaint.

8. In ***A.S. Gauraya's case (supra)*** the Supreme Court was again considering a similar question. After referring to the ***Pramatha Nath Taluqdar's case (supra),*** the Supreme Court observed that the second complaint is permissible in law if it could be brought within the limitations imposed by the Supreme Court in that case.

9. In ***Mahesh Chand's case (Supra)*** the Supreme Court again reiterated the same principle. It is pertinent to note that, in that case in respect of the first complaint the case disposal report was filed before the learned Magistrate because the investigating officer came to

the conclusion that the complaint involved a civil dispute. Thereafter, the complainant filed a protest petition. That petition also came to be

dismissed. Again a third complaint came to be filed. The question was whether fresh complaint on the same allegations could be entertained or not. While dealing with this question, the Supreme Court referred to ***Taluqdar's case (supra)*** and observed as under:-

> "*The second complaint would not be completely barred. There is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under S. 203 Cr. P. C. may take cognizance of an offence and issue process if there is sufficient grounds for proceeding. Second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced.*

10. In ***Poonam Chand Jain' scase (supra)*** Supreme Court again reiterated the same view.

11. I may also usefully refer to the judgment of the Gujrat High

Court in ***A. H. Pathan' scase (supra),*** as the facts in that case are similar to the facts with which I am concerned. In that case also the

complaint was dismissed for default. The accused was discharged. The Gujrat High Court considered the relevant provisions of the Code. It referred to Section 300 of the Code. It observed that the order of discharge is not an order of acquittal. It then referred to the ***Taluqdar's case (supra)*** where it is observed that an order of dismissal under Section 203 of the Code is no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances and concluded that it was open to the complainant to file a fresh complaint subject to the limitation as prescribed by the Supreme Court.

12. In my opinion, the ratio of the above Judgment is clearly applicable to the facts of this case. Undoubtedly, the material observations containing allegations in both the complaints are same. However, in the second complaint, respondent 1 has added the explanation as to why he could not remain present in the court when the first complaint was dismissed. In my opinion, in the facts and

circumstances of the case and considering the explanation offered by respondent 1 if the second complaint is not entertained, it may lead to miscarriage of justice. Hence, the learned Magistrate cannot be faulted for having passed the impugned order.

13. So far as the point of limitation is concerned, in my opinion, it would always be open to the petitioner to raise it before the learned Magistrate, at the appropriate time. Once the evidence is adduced this contention can be properly appreciated. Needless to say that if it is raised, the learned Magistrate will have to consider it in accordance with law.

14. With the above observations, the petition is dismissed.

(SMT. RANJANA DESAI, J)